

## **FINAL REPORT OF RECOMMENDATIONS AND FINDINGS**

By the Pharmacy Technicians' Technical Review Committee  
for the Review of the Application for Registering Pharmacy Technicians in Nebraska  
by the Board of Pharmacy of Nebraska

To the Nebraska State Board of Health, the  
Director of the Department of Health and Human Services Regulation  
and Licensure, and the Legislature

September 1, 2005

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## **INTRODUCTION**

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Health and Human Services Department of Regulation and Licensure. The Director of this Agency will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with four statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Agency along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

**MEMBERS OF THE PHARMACY TECHNICIANS'  
TECHNICAL REVIEW COMMITTEE**

Gary Westerman, D.D.S. (Chairperson)  
(Omaha)

Richard Zarek, R. P.  
(Gothenburg)

Michelle Milke  
(Adams)

Mike Boden  
(Lincoln)

Tami Campbell  
(Grand Island)

Kevin Horne  
(Lincoln)

Wendy Olson  
(Lincoln)

## EXECUTIVE SUMMARY OF THE PROPOSAL AND RECOMMENDATIONS

### **SUMMARY OF THE APPLICANTS' PROPOSAL**

The Nebraska Board of Pharmacy is proposing that pharmacy technicians be registered. This means that anyone seeking employment as a pharmacy technician would be required to have their name included on a registry maintained by the Health and Human Services Department of Regulation and Licensure. The proposal makes no changes in the current statutorily defined functions or oversight requirements for pharmacy technicians. **(The Text of the Applicants' Proposal, Responses to Questions 3, 4, and 5)**

According to the applicant group, registration requirements would not include a criminal background check. However, the applicants stated that the Board of Pharmacy, under the terms of the proposal, would encourage the Department to do a justice check on potential applicants for pharmacy technician employment if there is deemed to be reason to do so. The proposal would continue the current policy of excluding persons from employment as pharmacy technicians if they have been convicted of drug-related offenses. The proposal would not expand this provision to include convictions on other kinds of offenses. **(The Transcript of the Public Hearing, Page 6)**

Under the terms of the proposal, all pharmacists who employ pharmacy technicians would be required to use this registry as a database from which important information about potential applicants for employment could be ascertained. Only persons in good standing as so defined under the terms of the registry would be considered employable. **(The Transcript of the Public Hearing, Page 9)**

## **SUMMARY OF COMMITTEE RECOMMENDATIONS**

The committee members recommended approval of the applicants' proposal by voting to support the proposal on each of the four criteria of the credentialing review program during the fourth meeting of the committee. **(A complete account of these recommendations is included in the following section of this report)**

## COMMITTEE RECOMMENDATIONS ON THE PROPOSAL

During the fourth meeting of the review process for the proposal, the committee members made their recommendations on the proposal. The committee members discussed the statutory criteria of the Credentialing Review Program as defined under Section 71- 6201 through Section 71- 6230 that must be used to make recommendations. (All information in this section of the report was generated at the fourth meeting)

Dr. Westerman asked if the committee members had any other questions or inquiries regarding the credentialing review material. There being no response, Dr. Westerman stated that the next step would be for the committee members to take up the four criteria defined in the credentialing review statute. Dr. Westerman asked whether there were committee members who were not ready to take action on the criteria. There being no response, he asked staff to briefly discuss the first criterion. Staff person Briel commented that criterion one asks the committee to look at the current unregulated circumstance of the profession under review, and consider if this circumstance has the potential to be a source of significant harm to the public. He went on to state that if the committee members perceive that there is potential for harm, then they need to decide whether this potential for harm is serious enough to justify action by the state to deal with it.

**The committee members then acted on the first criterion.**

### **Criterion one states:**

**Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.**

Rick Zarek moved and Michelle Milke seconded that the proposal satisfies criterion one. Dr. Westerman asked if there was any discussion. Kevin Horne stated that based on Dr. Curt Barr's data from other states with complaint data, he had calculated the per thousand rate, and applied it to Nebraska, coming up with six complaints per year in Nebraska. He commented that this probably means less than 10 complaints per year in Nebraska, and that this satisfies him that the concerns are not remote. Mr. Zarek said he did not think the Board of Pharmacy would dispute that. He added that the Board hopes that they do not have more than ten pharmacists reported per year and would expect the number of pharmacy technicians to be similar. Mr. Zarek gave an example of a diversion case involving a pharmacy technician where the number of doses missing reached into six figures, and stated that this shows that even though the number of cases may not be high, the impact of each case can be significant.

Dr. Westerman reminded the committee that a yes vote is in favor the motion and means the proposal meets criterion one. The committee voted on the motion. Voting yes were Horne, Olson, Milke, Campbell, and Zarek. There were no nay votes. Chairperson Westerman abstained from voting. The motion was approved.

**The committee members then acted on the second criterion.**

**Criterion two states:**

**Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are consistent with the public welfare and interest.**

Staff person Briel explained that this criterion asks that the committee members determine whether or not the proposal would create any new kinds of harm to the public that might have the affect of canceling out any potential benefits.

Wendy Olson moved and Tami Campbell seconded that the proposal satisfies criterion two. Voting yes were Olson, Horne, Zarek, Campbell, and Milke. There were no nay votes. Chairperson Westerman abstained from voting. The motion was approved.

**The committee members then acted on the third criterion.**

**Criterion three states:**

**The public needs, and can reasonably expected to benefit from, assurance of initial and continuing professional ability by the state.**

Staff person Briel characterized criterion three as asking whether this proposal would create significant benefit to the public health and welfare. Michelle Milke moved, and Wendy Olson seconded, that the proposal satisfies criterion three.

The following discussion took place before voting. Wendy Olson stated that she had a couple of general questions on this because of information provided by Joni Cover of the Nebraska Pharmacists Association. She sought confirmation that the proposal's intent is to have a system that will record, organize and allow for the verification of the records of each pharmacy technician. She also sought confirmation that the intent of the proposal is not only to have a registry consisting of a list of names available to employers, but also to provide a system for public protection. Ms. Olson also sought to confirm that Ms. Cover does not want criminal background checks, and questioned what benefit the proposal would provide without this provision.

Rick Zarek commented that the exemption of criminal background checks is not in the proposal. Mr. Zarek also commented that the Board of Pharmacy intends that all pharmacy technicians should be on the registry in order to be eligible to work in Nebraska, and would not be eligible to work in Nebraska if removed from it. He expressed concern that to allow employers to hire technicians not in good standing with the registry would significantly reduce the impact of the proposal. He added that each pharmacy technician would have to carefully examine their statutory reporting requirements and understand them. He went on to state that if a pharmacy technician saw another pharmacy technician breaking a law they knew applied to pharmacy technicians, then they would have to report it. Similarly, if a pharmacy technician saw a member of another profession practicing while impaired, then the pharmacy technician would have to report that as well. Under these circumstances, Mr. Zarek indicated that mandatory reporting could be a big benefit. Mr. Zarek stated that the views of Joni Cover on these matters differ from those of the Board of Pharmacy.



Wendy Olson asked what types of protection the pharmacy technician has under the proposal from erroneous, negative reports. Mr. Zarek answered that pharmacy technicians would have all the due process of law under the ULL if a complaint were brought against them. He went on to state that complaints are investigated and the Attorney General's Office files a petition if the complaint has merit. The pharmacy technician would have the right to a public hearing as well as the right to appeal under due process of law the same as any other profession under the ULL.

Michelle Milke asked what powers the Board of Pharmacy would have over pharmacy technicians. She asked whether due process would take care of pharmacy technicians or if it would be possible for the Board to levy other fines. Mr. Zarek responded that if a pharmacy technician were brought before the Board for discipline, such discipline would have to follow the rules laid down by the ULL. Ms. Olson asked if all the options would be under the ULL. Mr. Zarek responded in the affirmative, and indicated that it is his understanding that the Department wants all credentialed providers to be subject to the same uniform disciplinary process.

Michelle Milke said that the pharmacy technicians have limited training and that they should therefore not be subject to mandatory reporting.

Wendy Olson asked if requiring employers to hire only pharmacy technicians that are on the registry and in good standing is the standard of practice that the applicant group intends to establish. Mr. Zarek answered that it was the applicant group's intent that no one would work unless they were on this list.

Wendy Olson requested clarification that the proposal also seeks to include hospital employers as well. Mr. Zarek answered in the affirmative.

The committee voted on the motion. Voting yes were Campbell, Zarek, Milke, Olson, and Horne. There were no nay votes. Chairperson Westerman abstained from voting. The motion was approved.

**The committee members then acted on the fourth criterion.**

**Criterion four states:**

**The public cannot be effectively protected by other means in a more cost-effective manner.**

Staff person Briel commented that criterion four asks the committee members to try to envision alternative ways the problems identified in the proposal could be resolved. It also asks the committee members whether this proposal is effective in addressing the problems identified in the proposal, and if so, whether it is the most cost-efficient way to address these concerns.

Rick Zarek moved and Kevin Horne seconded that the proposal satisfies criterion four.

Michelle Milke stated that there are going to be costs other than registration fees. She stated that someone is going to have to keep track of everyone who is registered in a computer database, handle renewals, communicate with the board, and answer phone calls about who is on the registry. She noted other potential costs associated, for example, with rehabilitation costs for treatment of impaired practitioners. She asked whether that service

would be available to pharmacy technicians.

Rick Zarek explained that if the pharmacy technician is credentialed under the ULL, the State assesses costs to the professions using a formula with a base cost for most of the items mentioned: personnel, computer service, investigation and assessment for drug dependency or addiction through the Licensee Assistance Program (LAP). However, if LAP recommends rehabilitation in the form of in or outpatient drug programs, or if drug screenings are included in a probationary period, those costs are borne by the individual. Mr. Zarek stated that the base cost is somewhere around 30 or 31 dollars per credential, per year, and that every profession is assigned the same base cost to run the program. He added that each profession has their specific costs added to the base cost to calculate a cost per credential. He commented that the Department also has people that oversee rehabilitation if that is so ordered. Mr. Zarek stated that if a pharmacist is caught diverting, they might be suspended for a set period and ordered into treatment. He informed the committee members that typical terms of probation may be to attend two "AA" meetings per week and random body screening fluids testing, and that if the pharmacist successfully completes the probation, then the license may be given back. Michelle Milke asked Rick Zarek if he foresees this process applying to pharmacy technician regulation. Mr. Zarek responded that if the pharmacy technicians were under ULL, then all of the above would apply. Ms. Milke then asked that if exemption for the pharmacy technician from the ULL is requested, would that mean that they would not be eligible for the drug treatment program? Mr. Zarek responded that, yes, it would also mean that pharmacy technicians would have to finance such assessment and treatment on their own, and these costs could be significantly higher than being in the ULL pool.

Olson pointed out that appeals would now be there and someone would have to pay. Mr. Zarek responded that the credentialing fees collected would cover these costs.

The committee voted on the motion. Voting yes were Campbell, Zarek, Horne, Olson, and Milke. There were no nay votes. Chairperson Westerman abstained from voting. The motion was approved.

**By these four votes on the criteria, the committee members recommended approval of the proposal.**

### **Additional Discussion on the Issues of the Review**

Dr. Westerman initiated discussion on whether the committee members wanted to make any ancillary recommendations. He stated that one possible topic for ancillary recommendations would be in the area of mandatory reporting. Tami Campbell asked for an explanation of mandatory reporting. Dr. Westerman gave an example where a dentist discovers that a colleague is using illicit drugs. Dr. Westerman stated that it is the responsibility of that dentist to report this infraction to the Board of Dentistry. If he does not report such an infraction, his failure to report would in and of itself be grounds for disciplinary action against his license. Dr. Westerman went on to state that it is the obligation of this hypothetical dentist to report any first-hand knowledge pertinent to impairment on the part of any health care provider licensed under the Uniform Licensure Law. Rick Zarek added that credentialed professionals must report any infractions by professionals who possess the same credential they possess. Staff person Briel explained that there is another dimension for which you can be disciplined, and that is self-reporting. Mr. Briel stated that licensed providers must respond truthfully if asked whether they have had any convictions for offenses defined under the ULL or face discipline for filing a false

report.

Tami Campbell asked Michelle Milke if her concern with mandatory reporting is that a pharmacy technician will not recognize that drugs are being diverted. Milke responded that there is a unique relationship between the pharmacist and the pharmacy technician, and that the pharmacy technician must do exactly what the pharmacist tells them to do. She stated that a pharmacy technician needs to have limits as to what they are required to report. She added that impairment and diversion are reasonable areas for reporting and pharmacy technicians should be responsible for these. They should report other pharmacy technicians for these infractions as well.

Mr. Zarek responded that the pharmacist is responsible for pharmacist rules and regulations, not the pharmacy technician. A pharmacy technician is not responsible for reporting if a pharmacist does not follow pharmacist rules and regulations, but would be responsible for reporting on any violation of pharmacy technician rules and regulations by a colleague. He commented that an example of a pharmacy technician regulation is that prescriptions cannot be accepted over the phone, even if the pharmacist orders you to take it over the phone. He stated that in this circumstance, the pharmacy technician should report that the pharmacist asked the pharmacy technician to break the law. He added that the relationship between the pharmacist and the pharmacy technician is comparable to relationships between a dentist and dental hygienist or a doctor and nurse.

Staff person Briel asked if the Board of Pharmacy has authority to provide guidelines pertinent to reporting. Milke said if the Board of Pharmacy provided guidelines then that would be good. She stated that people she has talked to told her that you must report everything under mandatory reporting.

Olson asked if mandatory reporting covered nurse aides. Milke responded yes.

Olson stated that it is not unreasonable that pharmacy technicians have mandatory reporting, but the question is what the scope of their reporting should be.

Mr. Zarek said that the ULL is a law for everyone and every credential is subject to the ULL. He explained that in Pharmacy, all students were taken out of the ULL because of concerns about mandatory reporting. He went on to explain that students do not have a sufficiently thorough knowledge of their profession for them to report fairly and competently, and that such a requirement would place students in an uncomfortable position vis-à-vis the student-teacher relationship. Mr. Zarek stated that if a student were to tell a teacher about an incident, the teacher in question would be required to report the student for first-hand knowledge and for failure to report.

Olson said her concerns come from the public hearing where one person testified for, and one against, mandatory reporting. She asked whether there would be a benefit if the committee were to spell out the concern. Milke responded that if the ULL clarifies mandatory reporting as has been discussed here, then there might not be a concern.

Staff person Briel said that the committee members could make a statement of concern rather than a recommendation if they so desire.

Zarek read the section on mandatory reporting from the ULL to the committee [71-168(4)(a) and 71-168(4)(b)]. Mandatory reporting in regard to other professions is explained in 71-168(4)(b).

Milke expressed concern about circumstances wherein a patient of a pharmacist makes a complaint to the Board of Pharmacy that the pharmacist in question appeared drunk on the day he dispensed to the patient. She asked what would happen to a pharmacy technician who was working in that situation. Rick Zarek answered that it would be up to the Attorney General's Office, but that in his judgement, if a pharmacy technician sees a pharmacist practicing impaired, then under the terms of mandatory reporting they would be required to report this incident to the Board. Staff person Briel commented that under these kinds of situations the concern of the law will always be with the "greater good", which is public protection rather than with what is, or is not, good for an individual practitioner who might be caught up in the situation.

Dr. Westerman asked if the committee members wanted to make an ancillary recommendation about mandatory reporting. Mr. Zarek stated he did not think there was enough reason to make an ancillary recommendation and he advised the other committee members against making a recommendation on something that might not be a problem.

The committee members decided not to make an ancillary recommendation on mandatory reporting. The committee members agreed that they did not have sufficient information on this issue to make a recommendation, and that they did not need to address this issue in order to fulfill their charge.

## COMMITTEE DISCUSSION ON ISSUES OF THE REVIEW

### 1) Does the current situation comprise harm or potential for harm to the public health and welfare?

Rick Zarek, R.P., the applicant group representative on the committee, informed the committee members that the proposal was created in order to establish a process whereby pharmacy technicians in Nebraska can be tracked and if necessary, disciplined, for conduct contrary to Nebraska law. He commented that such a process would also provide regulators with a means of documenting the number and geographical distribution of the members of this occupational group in our state. Mr. Zarek commented that all the states around us except Colorado are registering pharmacy technicians and taking the registration away if there is a discipline problem. He added that now some of those disciplined technicians might be moving into Nebraska, a state that currently does not have a statute regulating them. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Pertinent to evidence of harm to the public inherent in the current situation, Mr. Zarek commented that he has polled South Dakota and Kansas regarding the extent of the drug diversion problem in those states, and found that in Kansas one person has been caught committing this offense. He added that this person was from a state that had just recently passed tougher regulatory legislation pertinent to these kinds of problems. Mr. Zarek added that usually these people get caught, but because this is not always the case, it would be good to have an additional regulatory tool to assist in this task. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Dr. Westerman asked Mr. Zarek to approximate how many pharmacists and pharmacy technicians there are in Nebraska. Mr. Zarek responded that he would guess that there are approximately 2,400 pharmacists and 5,000 pharmacy technicians in our state, but that the latter number is probably well short of the actual number because it is so difficult to get a handle on those who might be employed by hospital pharmacies, veterans hospitals, the military and the correctional system. Becky Wisell, a Section Administrator in the Agency's Credentialing Division, provided data to the committee members indicating that there are currently 2,908 licensed pharmacists in Nebraska, but indicated that there is no comparable data pertinent to pharmacy technicians. Dr. Westerman commented that a registry would provide us with that kind of information. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Mike Boden asked the applicants to discuss the extent to which the functions and duties of pharmacy technicians vary from pharmacy to pharmacy. Mr. Zarek responded that all community pharmacies are required to meet guidelines set by the Board of Pharmacy. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Tami Campbell asked the applicants about those persons who seek employment solely for the purpose of selling drugs. Mr. Zarek responded by stating that this is very unusual in Nebraska, although there is a case where a pharmacy technician was caught with large amounts of controlled substances and is now being prosecuted. Mr. Zarek commented that when diversion occurs it is almost always for personal use, not for purposes of resale. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

During the public hearing, Curt Barr, R.P., Pharm.D., informed the committee members that currently neither hospitals nor community pharmacies have systems in place for tracking

employees other than their own employee records, which are not available to the public. Dr. Barr informed the committee members that there are 102 hospitals in Nebraska and of these, 42 hospitals, or approximately 41 percent of them, have community pharmacy licenses. He added that there are currently a total of 479 community pharmacies in Nebraska. Dr. Barr continued his testimony by stating that reports from pharmacies around the nation indicate that complaint rates against pharmacy technicians pertinent to drug diversion are equal to, or greater than, those against pharmacists. **(The Transcript of the Public Hearing, Pages 6 and 9)**

During the public hearing, Joni Cover, J.D., speaking on behalf of the Nebraska Pharmacists Association, informed the committee members that the employee records of pharmacy technicians employed by health care facilities are not handled any differently than those of any other employees. Ms. Cover stated that as with other employees, the employee records of pharmacy technicians are confidential, and that the information in them is not shared with other entities. **(The Transcript of the Public Hearing, Page 11)**

**2) Would the proposal be effective in dealing with the problem identified?**

Mike Boden asked the applicants to discuss how the proposal might impact hospital pharmacies. Rick Zarek asked Becky Wisell, a Section Administrator in the Agency's Credentialing Division, to respond to this question. Ms. Wisell indicated that some of these pharmacies are licensed as "community pharmacies" and that these pharmacies would be covered by the proposal since they are regulated by the Board of Pharmacy. Ms. Wisell then stated that those hospital pharmacies that are not licensed as community pharmacies are not regulated by the Board of Pharmacy, but instead are regulated under the Agency's Facilities regulatory programs. These pharmacies would not be covered by the proposal as it is currently worded. Ms. Wisell noted that under current Nebraska law, the pharmacists that are employed by hospital pharmacies are regulated by the Board of Pharmacy even though their pharmacies per se might be regulated under Facilities regulatory programs. She added that it would be possible to modify the proposal so as to grant the Board of Pharmacy the authority to regulate pharmacy technicians as well. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Pertinent to inspections of pharmacies, Mike Boden asked whether anyone is exempt from these inspections. Rick Zarek responded that the Veteran's Administration, the military and the correctional system are not covered by this inspection process. Wendy Olson asked whether this process would include student health center pharmacies. Cecilia Curtis-Beard of the Agency's Credentialing Division responded by stating that these pharmacies are currently registered and inspected as community pharmacies. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

The committee members then discussed how discipline would be handled under the terms of the proposal. Ms. Wisell explained the desire of the Nebraska Credentialing Reform process to ensure that all credentialed persons are treated equitably under the current rewrite of the Uniform Licensing Law. Staff person Ron Briel commented that due process of law would be as important under this proposal as it would under any other credentialing concept. Ms. Milke asked whether there are any states that have put a technician on the Pharmacy board to allow their input. Mr. Zarek responded that to his knowledge this has not been done. Ms. Wisell stated that she would check her data pertinent to this question. Ms. Milke commented that if this proposal passes, pharmacy technicians should be advised of the severe consequences pertaining to abuse or fraud when they are placed on the registry. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

During the public hearing, Curt Barr, R.P., Pharm.D., stated that information received from the National Association of Boards of Pharmacy (NABP) pertinent to states that have experience with the credentialing of pharmacy technicians indicates that such programs have been effective in preventing those pharmacy technicians caught diverting drugs from becoming employed again as pharmacy technicians. He stated that this information indicates that these programs are working well, and are a cost-effective means of addressing drug diversion problems. **(The Transcript of the Public Hearing, Page 8)**

**3) What new harm or new costs, if any, might stem from this proposal?**

Mike Boden asked the applicants whether the proposal would create a fee to the pharmacy technician, and if so, questioned whether the fee would be a barrier to entry into the profession. Mr. Zarek responded that it would create a fee, but that it probably would not be so high as to be a barrier to entry into the occupation. Mr. Zarek added that whether or not probation would be included as a component of the process would be a factor in determining how high these fees might be. Mr. Boden asked whether this issue would be likely to come up during the public hearing. Mr. Zarek stated that the issue of fees would probably come up during the public hearing, but doesn't feel that it's a big issue. He added that most pharmacy technicians are highly skilled personnel, and their employing pharmacies won't want to lose them. Ms. Milke commented that most employers would probably pay the fee for their pharmacy technicians because they are such valued employees. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Mr. Zarek stated that he does not feel that the proposal would create a significant hardship for either pharmacy technicians or their employing pharmacies, and added that pharmacists currently pay over two hundred dollars in fees for their own licenses. He commented that this is insignificant considering the dollar amount of prescriptions filled in a day, and that there is little reason to be concerned that any costs pertinent to the creation of a registry would be passed on to consumers. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Michelle Milke asked Mr. Zarek whether the proposal would require that criminal background checks be conducted on pharmacy technicians, and if so, how this would impact the amount of time and the costs associated with getting pharmacy technicians registered. Mr. Zarek responded that right now we cannot track these practitioners at all, and that what is needed is to at least have information that will enable the identification of those pharmacy technicians who have committed drug-related offenses while on the job. He added that the Board of Pharmacy would have to decide whether or not to include other criminal offenses as part of the process. Becky Wisell indicated that the Department's Credentialing Division is currently performing a Nebraska Justice Department background check on every Pharmacy Intern. This check shows all misdemeanors and felonies ever committed by that person within the State of Nebraska, and the turnaround time for a probationary license is two to three days. She commented that including criminal background checks would probably lengthen the time it would take to get pharmacy technicians on the registry as well as raise the overall costs associated with this proposed regulatory process. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

The applicants were asked who would maintain the registry, and how would it be supported financially? Mr. Zarek responded that the Health and Human Services System would have to create and maintain this system. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

During the public hearing, testimony was received regarding the cost of the proposal. Curt Barr, R.P., Pharm.D., commented that under the terms of the proposal the pharmacy technicians would be expected to cover the cost of their registration. Dr. Barr continued his comments by stating that these costs would be calculated by the Department, and stated that current base cost per credential is approximately thirty dollars. He added that the cost impact of including pharmacy technicians under the Uniform Licensure Law would be only a very minimal increase in cost per credential. Dr. Barr then commented on the issue of whether employers might be willing to pick up some of the costs related to of credentialing pharmacy technicians by stating that the Board of Pharmacy has no information on whether this is a likely scenario at this time. He added that if any of such cost were passed along to consumers, the additional costs would be so small as to be insignificant. Dr. Barr presented some data from the current registry for nurse aides for fiscal year 2005 in order to provide the committee members with a credentialing process that would be at least somewhat comparable to the proposal. He informed the committee members that the nurse aide registry's budget for fiscal year 2005 was 430,000 dollars, and that this budgeted amount also covered the salaries for three nurses who oversee competency testing. He went on to state that if the cost of these salaries were hypothetically removed from the budget calculations, the cost per credential would be approximately five or six dollars. **(The Transcript of the Public Hearing, Pages 6, 7, and 8)**

**4) Are there viable alternatives to the proposal, and is the proposal the most cost-effective of all the alternatives for resolving the problems identified by the applicant group?**

Wendy Olson asked the applicants whether they had considered the idea of requiring certification of all pharmacy technicians. Staff person Briel cautioned that in Nebraska, state certification is, by its nature, a voluntary credential and that practitioners cannot be required to become certified. Ms. Milke responded that requiring any mandatory credential above the level of registration would almost certainly limit the pool of eligible persons willing to do this kind of work. Mr. Zarek commented that there are some states that license pharmacy technicians, and that one of these is Utah. He observed that only in Utah is there a requirement that a pharmacy technician serve on the pharmacy board. Ms. Wisell then provided some data pertinent to regulation of pharmacy technicians in other states. She informed the committee members that five states license them, four states certify them, and that many other states register them. She added that Nebraska is one of only fourteen states that do not regulate them in any way. **(The Minutes of the Second Meeting, Held on June 9, 2005)**

Ms. Olsen asked whether there would be a renewal process. Mr. Zarek responded that there are two options: 1) there would be no renewal process, and once you are on the registry your name will always be on it. Ms. Wisell commented that those persons who have had disciplinary actions taken against them would have that noted with their name, and that this information would be part of their permanent record on the registry; 2) there would be a renewal process, with pharmacy technicians renewing on the same biannual basis as pharmacists or during the off year. The second option would require the technician to sign an affidavit on the renewal form stating that they have not had any felonies or misdemeanors (with the exception of minor traffic tickets) during the preceding two years.

**(The Minutes of the Second Meeting, Held on June 9, 2005)**

During the public hearing, Curt Barr, R.P., Pharm.D., stated that information received from



the National Association of Boards of Pharmacy (NABP) pertinent to states that have experience with the credentialing of pharmacy technicians indicates that such programs have been effective in preventing those pharmacy technicians caught diverting drugs from becoming employed again as pharmacy technicians. He stated that this information indicates that these programs are working well, and are a cost-effective means of addressing drug diversion problems. **(The Transcript of the Public Hearing, Page 8)**

**5) Should mandatory reporting be made part of any bill designed to advance the proposal in the legislature?**

During the public hearing, Joni Cover, J.D., speaking on behalf of the Nebraska Pharmacists Association, stated that any bill advancing the proposal in the Legislature should exempt pharmacy technicians from mandatory reporting provisions of the Uniform Licensure Law. Ms. Cover commented that this requirement has typically applied to licensed health professionals under the Uniform Licensure Law, and not to those with a lower tier of credentialing. Ms. Cover noted that pharmacy interns, who are not licensed, have been exempted from this requirement. Ms. Cover stated that members of her association have expressed doubts about the ability of either pharmacy interns or pharmacy technicians to participate under mandatory reporting competently due to their incomplete knowledge of pharmacy law. **(The Transcript of the Public Hearing, Page 20)**

Rick Zarek, R.P., responded to these comments by stating that there are significant differences between pharmacy interns and pharmacy technicians, and that the former are students while the latter are employees in the pharmacy workforce. Mr. Zarek commented that the Board of Pharmacy has a system in place to screen out frivolous complaints. **(The Transcript of the Public Hearing, Page 21)**

**6) Should criminal background checks be made part of any bill designed to advance the proposal in the legislature?**

During the public hearing, Joni Cover, J.D., speaking on behalf of the Nebraska Pharmacists Association, commented that it is not necessary to include criminal background checks as part of the regulatory process for pharmacy technicians. Ms. Cover indicated that there are alternative methods of addressing criminal background issues that work as well and are less costly. She discussed the idea of a signed affidavit attesting that the signer has not been convicted of any drug-related offenses as one way of addressing concerns about criminal history. **(The Transcript of the Public Hearing, Page 24)**

Rick Zarek, R.P., commented that an alternative to criminal background checks is the idea of doing a justice search to ascertain whether someone has been convicted of a drug-related crime. This approach is less complicated and less costly than doing criminal background checks. **(The Transcript of the Public Hearing, Page 28)**

## OVERVIEW OF COMMITTEE PROCEEDINGS

The committee members met for the first time on **May 5, 2005** in Lincoln, at the Nebraska State Office Building. The committee members received an orientation regarding their duties and responsibilities under the Credentialing Review Program.

The committee members held their second meeting on **June 9, 2005** in Lincoln, in the State Office Building. The committee members thoroughly discussed the applicants' proposal and generated questions and issues that they wanted discussed further at the next phase of the review process, which is the public hearing.

The committee members met for their third meeting on **July 7, 2005** in Lincoln, in the Nebraska State Office Building. This meeting was the public hearing on the proposal during which both proponents and opponents were each given one half hour to present their testimony. Individual testifiers were given ten minutes to present their testimony. There was also a rebuttal period after the formal presentations for testifiers to address comments made by other testifiers during the formal presentation period. A public comment period lasting ten days beyond the date of the public hearing was also provided for, during which the committee members could receive additional comments in writing from interested parties.

The committee members met for their fourth meeting on **August 4, 2005** in Lincoln, in the Nebraska State Office Building. The committee members continued their discussion on the proposal, and then formulated their recommendations on the proposal.

The committee members met for their fifth meeting on **September 1, 2005** in Lincoln, in the State Office Building, and at this meeting the committee members made corrections to the draft report of recommendations, and then approved the corrected version of the report as the official document embodying the recommendations of the committee members on the proposal. The committee members then adjourned sine die.